

United States
Circuit Court of Appeals

For the Ninth Circuit. 4

LUTHER WEEDIN, as Commissioner of Immigration at the Port of Seattle, Washington, for the United States Government,
Appellant,

vs.

TAYOKICHI YAMADA,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

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vs.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Attorney for Appellee. [1*]

In the United States District Court for the Western District of Washington, Northern Division.

No. 8623.

In the Matter of the Application of TAYOKICHI YAMADA for a Writ of Habeas Corpus.

PETITION.

The petition of Tayokichi Yamada, a Japanese alien now residing at Seattle, within the said Division and District, respectfully shows to the Court:

*Page-number appearing at foot of page of original certified Transcript of Record.

I.

That he is a citizen and subject of the Empire of Japan, of the age of 37 years; that on or about September 10th, 1902, he was lawfully admitted to the United States of America and ever since said date has been lawfully domiciled in the United States of America, and for upwards of ten years last past has been an actual *bona fide* resident of the city of Seattle, county of King, State of Washington.

II.

That your petitioner is now imprisoned, detained and restrained of his liberty by Luther Weedin, United States Commissioner of Immigration, and his officers, deputies and assistants, at the port of Seattle, State of Washington; that he is not committed or detained by virtue of a final judgment and decree of any competent tribunal of civil or criminal jurisdiction, or by virtue of an execution issued upon any such judgment or decree; that the sole cause or pretense of such confinement, imprisonment and restraint, according to the knowledge and belief of your petitioner, is that said commissioner, his officers, deputies and assistants above named claim arbitrarily and capriciously the right to deport your [2] petitioner from the United States and return him to the Empire of Japan, by reason of the fact that your petitioner while lawfully in the United States was on the 2d day of February, 1907, by a judgment made and entered in the Superior Court of the State of Washington for the county of King, adjudged guilty of the crime of assault with a deadly weapon, and sen-

tenced by said Court to confinement in the penitentiary of the State of Washington at Walla Walla therein for a period of two years.

III.

That your petitioner was paroled from the said state penitentiary on May 1, 1908, and immediately thereafter resumed his residence in the City of Seattle, State of Washington, where he continued to reside until about the month of September, 1913, when he made a trip to Japan for the purpose of visiting his aged parents, domiciled therein; that in making said trip petitioner did not intend to abandon his residence and domicile in the United States, but embarked upon said trip with the firm and express intention of returning to the United States after making a short visit to his parents as aforesaid; that he again returned to the United States on May 21st, 1914, bearing a lawful passport from the Imperial Consul of Japan, and was admitted at the port of Seattle on the 21st day of May, 1914, as a "nonimmigrant" and ever since said last mentioned date has continued to reside in the said city of Seattle, State of Washington; that he has never been convicted of any other crime or offense save the one herein mentioned and set forth.

IV.

That your petitioner has appealed to the Secretary of Labor at Washington, D. C., for his discharge and for permission to remain in the United States on the grounds set forth in this application for a writ of habeas corpus; that your petitioner's

[3] appeal to the said secretary has been denied and that pursuant to the order of deportation issued upon said warrant by the United States Immigration authorities your petitioner will be deported by said Commissioner of Immigration and his subordinate officers, inspectors and assistants at the port of Seattle unless your petitioner be released and discharged upon this application for the said writ of habeas corpus; that pending the return of an order to show cause why the writ should not issue, your petitioner is liable to deportation unless said commissioner, his officers, deputies and assistants are restrained and enjoined from deporting your petitioner and from placing or attempting to place him on board ship for that purpose.

V.

That by reason of the premises, as herein set out, your petitioner alleges that his arrest, detention and imprisonment is illegal and without authority of law and that a writ of habeas corpus should issue and your petitioner be released and discharged from custody.

WHEREFORE your petitioner prays:

1. That a writ of habeas corpus be issued by this Honorable Court, directed to the said Luther Weedin Commissioner of Immigration, both of Seattle, within said Division and District and that upon the return of said writ and hearing thereon your petitioner be discharged from custody and from the said illegal restraint and unlawful arrest.

2. That an order to show cause be issued forthwith directed to the said Luther Weedin, Commis-

sioner of Immigration, and his officers, deputies and assistants, directing them to be and appear in the above-entitled court at a time to be fixed by [4] this Honorable Court to show cause, if any there be, why the writ of habeas corpus prayed for in this petition should not issue in accordance with the prayer of said petition.

3. That pending a hearing upon the application for this writ of habeas corpus the said Luther Weedin and the United States Immigration Inspector, officers and assistants under his authority, be restrained and enjoined from deporting your petitioner from Seattle, Washington, to the Empire of Japan or to any other place in the world, and from removing your petitioner from the jurisdiction of this Court.

And your petitioner will ever pray.

M. J. GORDON,
TENNANT & CARMODY,
Attorneys for Petitioner. [5]

United States of America,
Western District of Washington,
Northern Division,—ss.

Tayokichi Yamada, being first duly sworn on oath, deposes and says: That he has read the foregoing petition for a writ of habeas corpus, knows the contents thereof and that the statements therein contained are true.

TAYOKICHI YAMADA.

Subscribed and sworn to before me this 16 day of June, 1924.

[Seal] GEO. R. TENNANT,
Notary Public in and for the State of Washington,
Residing at Seattle.

[Endorsed]: Filed in the United States District Court for the Western District of Washington, Northern Division. Jun. 16, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [6]

In the United States District Court for the Western District of Washington, Northern Division.

No. 8623.

In the Matter of the Application of TAYOKICHI YAMADA, for a Writ of Habeas Corpus.

ORDER TO SHOW CAUSE AND RESTRAINING ORDER.

This cause coming on to be heard upon the application of the petitioner herein for a writ of habeas corpus, and the Court having read the petition and being fully advised in the premises:

IT IS BY THE COURT ORDERED that Luther Weedin, Commissioner of Immigration at the Port of Seattle, together with divers and sundry the immigration officers, inspectors and officials at the Port of Seattle, acting under the authority of the United States and of said Luther Weedin at the Port of Seattle aforesaid, be and they and each

of them hereby are required to be and appear in the courtroom of the United States District Court at Seattle, Washington, in the Postoffice Building, on the 23d day of June, 1924, at 10 o'clock in the forenoon of said day, then and there to show cause, if any there be, why the writ of habeas corpus prayed for in the petition filed herein should not issue in accordance with the prayer of the said petition.

IT IS FURTHER ORDERED that the above-named Luther Weedin, Commissioner of Immigration of the United States at the Port of Seattle aforesaid, together with his assistants, deputies, inspectors, employees in the Immigration Service of the United States at Seattle aforesaid be, and each of them hereby is enjoined and restrained from removing the petitioner in the above-entitled cause, to wit, one Tayokichi Yamada, from the City of Seattle, and from and out of the jurisdiction of this [7] Court in the above division and district, provided a deposit of Fifty Dollars be made with Luther Weedin, Commissioner, to guarantee the expense of petitioner's maintenance pending this hearing, and from deporting beyond or overseas from the Port of Seattle, the said petitioner in this said cause.

Done in open court this 16 day of June, 1924.

JEREMIAH NETERER,
United States District Judge.

Form No. 282.

RETURN ON SERVICE OF WRIT.

United States of America,
Western District of Washington,—ss.

I hereby certify and return that I served the annexed order to show cause and restraining order on the therein named Luther Weedin, Commissioner of Immigration, personally at Seattle in King County, State of Washington, by handing to and leaving a true and correct copy thereof with Luther Weedin Commissioner of Immigration, personally at Seattle, in said District on the 16th day of June, A. D. 1924.

E. B. BENN,

U. S. Marshal.

By A. B. McDONALD,

Deputy.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 16, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [8]

United States District Court, Western District of
Washington, Northern Division.

No. 8623.

In the Matter of the Application of TAYOHICHI
YAMADA, *alias* H. YAMADA, for a Writ of
Habeas Corpus.

RETURN TO ORDER TO SHOW CAUSE.

To the Honorable District Court of the United States, for the Western District of Washington, Northern Division:

Now comes the respondent, Luther Weedin, United States Commissioner of Immigration for the District of Washington, with his office at the Port of Seattle, and for answer and return to the order to show cause entered herein, says that at the time of the service of order to show cause and of the petition herein upon him, the said respondent, the said Tayohichi Yamada, *alias* H. Yamada, was in the custody of this respondent, and held for deportation from the United States as an alien person subject to deportation, having been convicted of a felony or other crime or misdemeanor involving moral turpitude, prior to his entry into the United States, in violation of the Immigration Act of February 5, 1917; that the said Tayohichi Yamada, *alias* H. Yamada, was arrested under a warrant of arrest issued by the Secretary of Labor on the 19th day of February, 1924, and thereafter, given a hearing before an Immigrant Inspector on the 18th day of March, 1924; that as a result of the said hearing, the Immigrant Inspector made findings on April 22, 1924, said findings being that the said Tayohichi Yamada, *alias* H. Yamada, is an alien, a native of Japan, who entered the United States at the Port of Seattle, May 21, 1914; that he has been convicted of, and admits the [9] commission of a

felony, or other crime or misdemeanor involving moral turpitude, prior to his entry into the United States, to wit: assault with a deadly weapon; that as a result of said hearing the said Immigrant Inspector recommended deportation; thereafter an appeal was taken to the Secretary of Labor, and on the 12th day of May, 1924, the Secretary of Labor issued a warrant directing the deportation of the said Tayohichi Yamada, *alias* H. Yamada.

Respondent hereto attaches a copy of the record, order, decision and exhibits, both on the hearing before the Immigration Inspector at Seattle, Washington, on March 18, 1924, and the record of the submission of said hearing to the Secretary of Labor, which papers are hereby made a part and parcel of this return, the same as if copied herein in full. Respondent denies every allegation in the petition herein, except as heretofore expressly admitted.

WHEREFORE, respondent prays that the said writ of Habeas Corpus be denied.

LUTHER WEEDIN,
Commissioner of Immigration.

United States of America,
Western District of Washington,
Northern Division,—ss.

Luther Weedin, being first duly sworn, on oath states: That he is United States Commissioner of Immigration for the District of Washington; that he has read the foregoing return, knows the contents thereof, and believes the same to be true.

LUTHER WEEDIN.

Subscribed and sworn to before me this 27th day of June, 1924.

[Seal] D. L. YOUNG,
Notary Public in and for the State of Washington,
Residing at Seattle.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. June 27, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [10]

United States District Court, Western District of
Washington, Northern Division.

No. 8623.

In the Matter of the Application of TAYOKICHI
YAMADA, *alias* H. YAMADA, for a Writ of
Habeas Corpus.

TRAVERSE AND REPLY.

Comes now the petitioner and for reply to the return filed and entered herein by the respondent to the order to show cause why a writ of habeas corpus should not issue as prayed, and alleges:

I.

Your petitioner denies that he has been convicted of any crime or misdemeanor involving moral turpitude prior to his entry into the United States or at all.

WHEREFORE he prays judgment as in his petition is prayed.

T. YAMADA,
Petitioner.

DECISION.

Filed June 30, 1924.

The petitioner, by writ of habeas corpus, seeks discharge from a warrant of deportation on the ground that he was not granted a fair hearing and that there is no warrant of law to support deportation.

The petitioner lawfully entered the United States in 1902. In 1907 he was indicted and pleaded guilty to the crime of assault with a deadly weapon and was committed to the State penitentiary for a term of two years. In 1913 he departed on a visit to Japan and returned in 1914 on a passport describing him as a returning immigrant, and has resided in the City of Seattle continuously since re-entry. Pursuant to warrant of arrest issued by the Secretary of Labor, February 19, 1924, he was arrested and after hearing and appeal to the Secretary of Labor, was ordered deported on the ground

“That he has been convicted of, and admits the commission of a felony, or other crime or misdemeanor involving moral turpitude, prior to his entry into the United States, to wit, assault with a deadly weapon.”

M. J. GORDON, TENNANT & CARMODY,
Attorneys for Petitioner.

MATTHEW W. HILL, Asst. U. S. Attorney,
Attorney for United States.

NETERER, District Judge:

The petitioner invokes the five years after entry

limitation specified by Sec. 19, Act of 1917. The "Immigration Act" of 1924 took effect May 26, 1924, and has no application. The Government contends that the conviction of the alien in 1907 in the United States subjected him to deportation under the Act of 1917 at any time, and cites *Lauria vs. U. S.*, 271 Fed. 261; *U. S. ex rel. David vs. Todd*, 289 Fed. 60, and *Hughes vs. Tropele*, 296 Fed. 306.

Lauria first entered the United States Dec. 27, 1914. He was arrested on deportation warrant Dec. 19, 1919, and warrant of deportation was issued May 5, 1920. The effective date involved is conclusive that deportation proceedings were commenced within five years from the date of entry. The Court did say at page 263:

"We think Congress intended to pronounce classes of aliens who are undesirable and by general provisions of law exclude all within five years, but provided specifically that certain classes, including the class to which the appellant belongs, might be taken into custody and deported at any time."

In *U. S. ex. rel. Davis vs. Todd*, *supra*, the court held it sufficient if deportation proceedings are instituted within five years. [12]

The issue in the instant case is distinguished from that in the *Lauria* case in that this proceeding was not instituted within five years from date of entry. The court in the *Lauria* case is right in saying that the Congress intended to classify the aliens and to limit deportation to the particular classes, and that

Lauria was within the provisions of the act, but the language of the court is *obiter dictum* in saying that a person convicted of a crime involving moral turpitude prior to entry can be deported under the Act of 1917 *at any time*. Section 19 deals with two classes of aliens; the first is those who have no right to enter; the second class, those whose admission was lawful but whose subsequent conduct forfeited the right to remain. The five year limitation of the first class began at the date of entry and the five year limitation period of the second class began at the time of the commission of, or conviction of the inhibited crime. This is the view expressed by the Court of Appeals of the Third Circuit in *Hughes vs. Tropele, supra*. The petitioner is of the first class. Thus concluding, it is unnecessary to discuss whether the conviction involved moral turpitude. *Inter alia*, it may be said, however, that this court on May 25, 1922, in *re Eli Rousseau*, affirmed 284 Fed. 565, held that a person convicted under the state statute of the crime of being a "jointist" and sentenced to the penitentiary, was convicted of a crime involving moral turpitude.

The writ will be granted.

NETERER,

U. S. District Judge.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 30, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [13]

United States District Court, Western District
of Washington, Northern Division.

No. 8623.

In the Matter of the Application of TAYOKICHI
YAMADA, *alias* H. YAMADA, for a Writ
of Habeas Corpus.

ORDER GRANTING WRIT OF HABEAS
CORPUS.

In the above-entitled cause, the petitioner having on June 16, 1924, filed his petition for a writ of habeas corpus alleging that he was illegally detained and incarcerated by Luther Weedin, United States Commissioner of Immigration, at the port of Seattle, and the Court having made and entered an order herein requiring the said Luther Weedin to show cause before this Court why a writ of habeas corpus should not be granted to said petitioner upon the said petition, and the said Luther Weedin, as Commissioner as aforesaid, having made his return thereto, and the matter having come on to be heard on the 27th day of June, 1924, and the Court having on the 30th day of June, 1924, filed a decision herein holding, finding and deciding that the detention of the petitioner for deportation was unjustified and without warrant of law.

NOW, THEREFORE, it is by the Court ordered and considered, and the Court does hereby order and consider that a writ of habeas corpus is awarded and granted to the petitioner herein, and that said

writ do issue to Luther Weedin, Commissioner as aforesaid, commanding him to produce the body of Tayokichi Yamada before this Court on the 3d day of July, 1924, at 10 o'clock A. M., then and there to submit to such order as may be made by the Court herein.

Done in open court this 2d day of July, 1924.

WM. H. SAWTELLE,
Judge.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 2, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [14]

United States District Court, Western District of
Washington.

No. 8623.

WRIT OF HABEAS CORPUS.

The President of the United States of America: to
Luther Weedin, Commissioner of Immigration,
Seattle, Washington, GREETING:

WE COMMAND YOU, that you have the body of Tayokichi Yamada, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention by whatsoever name said Tayokichi Yamada, shall be called or charged, before the Hon. William H. Sawtelle, United States District Judge for the Western District of Washington, at the courtroom of said court, in the City of Seattle, in the Northern Division of

said Western District of Washington, on the 3d day of July, A. D. 1924, at 10 o'clock in the forenoon, to do and receive what shall then and there be considered concerning him the said Tayokichi Yamada, and have you then and there this writ.

WITNESS the Hon. WILLIAM H. SAWTELLE, Judge of the United States District Court for the Western District of Washington, this 2d day of July, in the year of our Lord one thousand nine hundred and twenty-four.

[Seal]

F. M. HARSHBERGER,

Clerk.

By S. M. H. Cook,

Deputy Clerk.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 2d, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy.

RETURN ON SERVICE OF WRIT.

United States of America,
Western District of Wash.,—ss.

I hereby certify and return that I served the annexed writ of habeas corpus on the therein named Luther Weedin, by handing to and leaving a true and correct copy thereof with him, personally, at Seattle, Wash., in said District, on the 2d day of July, A. D. 1924.

E. B. BENN,

U. S. Marshal.

By Joseph Knizek,

Deputy. [15]

United States District Court, Western District of
Washington, Northern Division.

No. 8623.

In the Matter of the Application of TAYOHICHI
YAMADA, *alias* H. YAMADA, for a Writ
of Habeas Corpus.

RETURN TO WRIT OF HABEAS CORPUS.

To the Honorable JEREMIAH NETERER, Judge
of the District Court of the United States for
the Western District of Washington:

Comes now Luther Weedin, United States Com-
missioner of Immigration at Seattle, Washington,
and for return to the writ of habeas corpus hereto-
fore served upon him, herewith produces in the
court the body of Tayohichi Yamada, *alias* H. Ya-
mada, and shows and certifies to this Court:

That the statement of facts in the return to the
order to show cause, heretofore filed herein, is true
and correct, and by reference thereto, is made a
part of this return, the same as though set forth in
full.

WHEREFORE, having made a full and complete
return and certificate as to the manner and author-
ity by which the said Tayohichi Yamada, *alias* H.
Yamada, is held, Luther Weedin, United States
Commissioner of Immigration, who makes this re-
turn prays this Court for an order quashing the
writ of habeas corpus heretofore entered.

LUTHER WEEDIN,
United States Commissioner of Immigration.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Sep. 26, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [16]

United States District Court, Western District of
Washington, Northern Division.

No. 8623.

In the Matter of the Application of TAYOKICHI
YAMADA, *alias* H. YAMADA, for a Writ
of Habeas Corpus.

ORDER DISCHARGING PETITIONER.

In the above-entitled cause, the petitioner having on June 16, 1924, filed his petition for a writ of habeas corpus alleging that he was illegally detained and incarcerated by Luther Weedin, United States Commissioner of Immigration, at the Port of Seattle, and the Court having made and entered an order herein requiring the said Luther Weedin, as Commissioner aforesaid, to show cause before this Court why a writ of habeas corpus should not be granted to said petitioner upon said petition, and the said Luther Weedin, Commissioner as aforesaid, having made his return thereto and the matter having come on for hearing on the 27th day of June, 1924, before the Honorable Jeremiah Neterer, Judge of the above-entitled court, and the said Judge having on the 30th day of June, 1924, filed a memorandum decision herein holding, finding and

deciding that the detention of the petitioner for deportation by the said Luther Weedin, Commissioner as aforesaid, was unjustified and without warrant of law and granting the writ of habeas corpus, and the Honorable William H. Sawtelle, sitting as Judge of the above-entitled court, having on July 2, 1924, made an order directing that a writ of habeas corpus be issued herein to the said Luther Weedin, Commissioner as aforesaid, commanding him to produce the body of said Tayokichi Yamada before this Court on the 3d day of July, 1924, at 10 o'clock A. M. and on the said 3d day of July, 1924, the said Luther Weedin, Commissioner as aforesaid, having produced the body of said Tayokichi Yamada in obedience to said writ of habeas corpus and no other or [17] further cause for his detention occurring except as disclosed in the return of said Commissioner of Immigration to the said writ of habeas corpus, and the said Honorable William H. Sawtelle, sitting as aforesaid, having released the petitioner on Five Hundred (\$500.00) Dollars cash bail pending further proceedings herein, but refusing to sign the final order discharging the petitioner for the reason that the matter was not heard before him or decided by him, and the said petitioner having on the 3d day of July, 1924, deposited with the Clerk of the above-entitled court Five Hundred (\$500.00) Dollars cash as bail, together with his recognizance for his appearance before the Court,

NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED BY THE COURT

that unless within five days the United States appeals from this order, the said Tayokichi Yamada be discharged and that he go hence without day.

Done in open court this 23d day of September, 1924.

JEREMIAH NETERER,
Judge.

O. K.—THOS. P. REVELLE,
U. S. Attorney,
DONALD G. GRAHAM,
Asst. U. S. Atty.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Sep. 23, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [18]

United States District Court, Western District of
Washington, Northern Division.

No. 8623.

In the Matter of the Petition of TAYOKICHI
YAMADA, *alias* H. YAMADA, for writ of
Habeas Corpus.

PETITION FOR APPEAL.

Luther Weedin, United States Commissioner of Immigration at the port of Seattle, the respondent above named, deeming himself aggrieved by the order and judgment entered herein on the 23d day of September, 1924, does hereby appeal from the

said order and judgment to the United States Circuit Court of Appeals for the Ninth Circuit, and prays that a transcript and record of proceedings and papers upon which said order and judgment is made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial District of the United States.

THOS. P. REVELLE,

United States Attorney for the Western District of
Washington,

By DONALD G. GRAHAM,
Assistant United States Attorney,
Attorneys for Appellant.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Sep. 26, 1924. F. M. Harshberger, Deputy. [19]

United States District Court, Western District of
Washington, Northern Division.

No. 8623.

In the Matter of the Petition of TAYOKICHI
YAMADA, *alias* H. YAMADA, for Writ of
Habeas Corpus.

NOTICE OF APPEAL.

To Tayokichi Yamada, *alias* H. Yamada, and to
M. J. Gordon & Tennant & Carmody, Attorneys
for Tayokichi Yamada, *alias* H. Yamada:

You, and each of you, are hereby notified that

Luther Weedin, as United States Commissioner of Immigration at the port of Seattle, respondent above named, hereby and now appeals from that certain order, judgment and decree made herein by the above-entitled court on the 23d day of September, 1924, adjudging, holding, finding and decreeing that the above-named petitioner for writ of habeas corpus, Tayokichi Yamada, *alias* H. Yamada, be discharged from the custody of said United States Commissioner of Immigration and from the whole thereof, to the United States Circuit Court of Appeals for the Ninth Circuit.

THOS. P. REVELLE,

United States Attorney for the Western District of
Washington,

By DONALD G. GRAHAM,

Assistant United States Attorney,

Attorneys for Luther Weedin, United States Commissioner of Immigration for the Port of Seattle.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Sep. 26, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [20]

United States District Court, Western District of
Washington, Northern Division.

No. 8623.

In the Matter of the Petition of TAYOKICHI
YAMADA, *alias* H. YAMADA, for a Writ
of Habeas Corpus.

ORDER ALLOWING APPEAL AND FIXING
BOND OF PETITIONER.

Now, to wit, on the 26th day of September, 1924,
IT IS ORDERED that the appeal be allowed as
prayed for, and

IT IS FURTHER ORDERED that the peti-
tioner for writ of habeas corpus may remain at
large pending said appeal, upon executing a recog-
nizance or bond to the United States of America,
to the satisfaction of the clerk of this court, in the
sum of Five Hundred Dollars, cash, which is now
on deposit with the clerk, for the appearance of
said petitioner to answer the judgment of the Cir-
cuit Court of Appeals, if the judgment of the Dis-
trict Court shall be reversed.

Done in open court this 26th day of September,
1924.

JEREMIAH NETERER,
Judge.

[Endorsed]: Filed in the United States District
Court, Western District of Washington, Northern
Division. Sep. 23, 1924. F. M. Harshberger,
Clerk. By S. E. Leitch, Deputy. [21]

United States District Court, Western District of
Washington, Northern Division.

No. 8623.

In the Matter of the Application of TOYOKICHI
YAMADA, *alias* H. YAMADA, for Writ of
Habeas Corpus.

ASSIGNMENTS OF ERROR.

Comes now Luther Weedin, United States Commissioner of Immigration at the Port of Seattle, Washington, and assigns error in the decision of the said District Court of Washington as follows:

I.

The Court erred in holding that deportation proceedings were not commenced within the time allowed by statute.

II.

The Court erred in holding and deciding that a writ of habeas corpus be awarded the petitioner herein.

III.

The Court erred in holding, deciding and adjudging that the petitioner be discharged from the custody of Luther Weedin as Commissioner of Immigration at the port of Seattle, Washington.

IV.

The Court erred in deciding, holding and adjudging that the petitioner was not subject to deporta-

tion but was entitled to remain in the United States and was entitled to be at large.

THOS. P. REVELLE,
United States Attorney for the Western District of
Washington,

DONALD G. GRAHAM,
Assistant United States Attorney,
Attorneys for the Appellant, Luther Weedin,
United States Commissioner of Immigration, at
the Port of Seattle, Washington.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Sep. 23, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [22]

United States District Court, Western District of
Washington, Northern Division.

No. 8623.

In the Matter of the Petition of TAYOKICHI
YAMADA, *alias* H. YAMADA, for a Writ
of Habeas Corpus.

STIPULATION.

IT IS HEREBY STIPULATED and agreed by and between M. J. Gordon & Geo. Tennant, Esquires, attorneys for Tayokichi Yamada, *alias* H. Yamada, appellee, and Thomas P. Revelle and Donald G. Graham, United States Attorney and Assistant United States Attorney, respectively, as attorneys for Luther Weedin, Commissioner of Im-

migration, appellant, that the original file and record of the Department of Labor covering the deportation proceedings against the petitioner which was filed with the respondent's return in the above-entitled cause may be by the Clerk of this Court sent up to the Clerk of the Circuit Court of Appeals as part of the appellate record in order that the said original immigration file may be considered by the Circuit Court of Appeals in lieu of a certified copy of said record and file and that said original records may be transmitted as part of the appellate record.

THOS. P. REVELLE,

United States Attorney,

DONALD G. GRAHAM,

Assistant United States Attorney,

Attorneys for Appellant.

M. J. GORDON,

GEO. R. TENNANT,

Attorneys for Appellee.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Sep. 26, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [23]

United States District Court, Western District of
Washington, Northern Division.

No. 8623.

In the Matter of the Petition of TAYOKICHI
YAMADA, *alias* H. YAMADA, for a Writ
of Habeas Corpus.

ORDER FOR TRANSMISSION OF ORIGINAL
RECORD.

Upon stipulation of counsel, it is by the Court ORDERED, and the Court does hereby order, that the Clerk of the above-entitled court transmit with the appellate record in said cause the original file and record of the Department of Labor, covering the deportation proceedings against the petitioner, which was filed with the respondent's return in the above cause, directly to the Clerk of the Circuit Court of Appeals, in order that the said original immigration file may be considered by the Circuit Court of Appeals in lieu of a certified copy of said record.

Done in open court this 2d day of October, 1924.

JEREMIAH NETERER,
United States District Judge.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Oct. 2, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [24]

United States District Court, Western District of
Washington, Northern Division.

No. 8623.

In the Matter of the Petition of TAYOKICHI
YAMADA, *alias* H. YAMADA, for a Writ
of Habeas Corpus.

PRAECIPE OF APPELLANT FOR TRAN-
SCRIPT OF RECORD ON APPEAL.

To the Clerk of the Above-entitled Court:

You will please prepare and duly authenticate the transcript and following portions of the record in the above-entitled case for appeal of the said appellant, heretofore allowed, to the United States Circuit Court of Appeals for the Ninth Circuit:

1. Petition for writ of habeas corpus.
2. Order to show cause.
3. Restraining order.
4. Return to order to show cause.
5. Traverse and reply of petitioner to return.
6. Decision of Honorable Jeremiah Neterer.
7. Order granting writ of habeas corpus.
8. Writ of habeas corpus.
9. Order discharging petitioner.
10. Petition for appeal.
11. Notice of appeal.
12. Order allowing appeal and fixing bond of petitioner.
13. Assignments of error.
14. Citation.
15. Return to writ of habeas corpus. [25]
16. Stipulation allowing original file and record of the Department of Labor to be sent to the Clerk of the Circuit Court of Appeals as part of the appellate record.

17. Order for transmission of original file and record.
18. This praecipe.

THOS. P. REVELLE,
United States Attorney,
DONALD G. GRAHAM,
Assistant United States Attorney,
Attorneys for Appellant.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Oct. 1, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [26]

In the United States District Court for the Western District of Washington, Northern Division.

No. 8623.

In the Matter of the Application of TAYOKICHI YAMADA, for a Writ of Habeas Corpus.

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRANSCRIPT OF RECORD.

United States of America,
Western District of Washington,—ss.

I, F. M. Harshberger, Clerk of the United States District Court for the Western District of Washington, do hereby certify this typewritten transcript of record, consisting of pages numbered from 1 to 26, inclusive, to be a full, true, correct and complete copy of so much of the record, papers,

and other proceedings in the above and foregoing entitled cause, as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on appeal herein, from the judgment of the said United States District Court for the Western District of Washington, to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses and costs incurred in my office on behalf of the appellant, for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit: [27]

Clerk's fees (Sec. 828, R. S. U. S.) for making record, certificate or return, 58 folios at 15¢	\$8.70
Certificate of Clerk to transcript of record, 4 folios at 15¢.....	.60
Seal to said certificate.....	.20
Certificate of Clerk to original exhibits, 2 folios at 15¢.....	.30
Seal to said certificate.....	.20

I hereby certify that the above cost for preparing and certifying record, amounting to \$10.00, will be included as constructive charges against the United States in my quarterly account to the Government of fees and emoluments for the quarter ending December 31, 1924.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court,

at Seattle, in said District, this 11th day of October, 1924.

[Seal]

F. M. HARSHBERGER,
Clerk United States District Court, Western Dis-
trict of Washington. [28]

United States District Court, Western District of
Washington, Northern Division.

No. 8623.

In the Matter of the Petition of TAYOKICHI
YAMADA, *alias* H. YAMADA, for a Writ of
Habeas Corpus.

CITATION.

The United States of America,—ss.

To Tayokichi Yamada, *alias* H. Yamada, GREET-
ING:

WHEREAS, Luther Weedin, United States Com-
missioner of Immigration at the Port of Seattle,
Washington, has lately appealed to the United
States Circuit Court of Appeals for the Ninth Cir-
cuit from the judgment, order and decree lately
on, to wit, the 23d day of September, 1924, ren-
dered in the District Court of the United States
for the Western District of Washington, made in
favor of you, adjudging and decreeing that Tayo-
kichi Yamada, *alias* H. Yamada, be discharged
from the custody of said Luther Weedin as United
States Commissioner of Immigration at the Port
of Seattle, Washington, and setting him at large;

YOU ARE THEREFORE CITED to appear before the United States Circuit Court of Appeals, in the City of San Francisco, State of California, on the 26th day of October next, to do and receive what may obtain to justice to be done in the premises.

GIVEN under my hand in the City of Seattle, in the Ninth Circuit, this 26th day of September, in the year of our Lord, nineteen hundred twenty-four, and the Independence of the United States the one hundred forty-eighth.

[Seal] JEREMIAH NETERER,
Judge of the U. S. District Court for the Western
District of Washington.

Rec'd copy hereof this 26th day of Sept., 1924.

M. J. GORDON and
TENNANT & CARMODY,
Attys. for Appellee.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Sep. 26, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [29]

[Endorsed]: No. 4359. United States Circuit Court of Appeals for the Ninth Circuit. Luther Weedin, as Commissioner of Immigration at the Port of Seattle, Washington, for the United States Government, Appellant, vs. Tayokichi Yamada, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the

Western District of Washington, Northern Division.

Filed October 14, 1924.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

